

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY POWER COMPANY)	
ALLEGED FAILURES TO COMPLY)	
WITH THE COMMISSION'S REGULATION)	CASE NO. 9989
807 KAR 5:006, SECTION 24)	

O R D E R

On August 20, 1987, the Commission ordered Kentucky Power Company ("Kentucky Power") to show cause why it should not be penalized for failures to comply with 807 KAR 5:006, Section 24, in that it had failed to properly inform the Public Service Commission of two accidents occurring within its service area.

These alleged failures to notify and submit timely reports were violations of 807 KAR 5:006, Section 24, which states:

Each utility, other than a natural gas utility, shall notify the commission of any utility related accident which results in death or serious injury to any person or any other incident which has or may result in substantial property damage or substantial loss of service. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph. A summary written report shall be submitted to the commission within seven (7) days. Natural gas utilities shall report accidents in accordance with the provisions of 807 KAR 5:027.

The facts giving rise to the alleged violations are as follows:

In the first incident, Kentucky Power failed to notify the Commission in a timely manner of a fatality which occurred on April 11, 1987. At approximately 4:30 p.m. on that day, Daniel

Burke was fatally injured in Yeager, Kentucky, while setting off an explosive charge in a water well, when the blasting cord contacted a 7.2 KV Kentucky Power distribution line. On April 13, 1987, at 8:00 a.m., the Commission Staff learned of the accident by reading of it in that morning's Lexington Herald-Leader. A member of the Commission staff telephoned Kentucky Power's safety and health manager at approximately 9:00 a.m. and scheduled an inspection for the same day. Additionally, Kentucky Power failed to submit a summary written report of this accident to the Commission until April 22, 1987.

In the second incident, Kentucky Power failed to submit a timely summary written report of another accident which occurred on June 11, 1987. At approximately 1:30 p.m. on that day, Danny Brumfield was seriously injured while installing a pole top cutout near Phelps, Kentucky. Brumfield's wrench slipped and contacted an energized primary conductor of Kentucky Power, causing second and third degree burns to the front of his body. Kentucky Power failed to submit a summary written report to the Commission until June 31, 1987, in response to a staff inquiry the preceding day.

Kentucky Power requested an informal conference, which was held on August 28, 1987, and a hearing was held October 8, 1987.

DISCUSSION

At the hearing, Kentucky Power contended that its policies for reporting accidents complied with the regulations and that the initiation of this proceeding was the first indication that its reporting procedures were not considered consistent with the regulation.

A Commission staff witness rebutted this testimony by producing a Commission letter dated August 28, 1984 (Commission Staff Exhibit No. 1), which was sent to all utilities. That letter emphasized the importance of prompt notice of fatal accidents and provided non-business phone numbers for notifying the Commission staff of accidents during non-business hours.

C. R. Boyle III, Kentucky Power's vice president of accounting, rates and finance, offered written testimony at the hearing that:

If our past practice of prompt reporting of fatalities is no longer acceptable, I respectfully request the Commission to define "prompt" to avoid future uncertainty and proceedings such as this. I would also request that the 7 days in which a written report must be filed be defined as 7 working days to avoid the problems that holidays and weekends provide.¹

Concerning the definition or interpretation of "prompt", a Commission staff witness testified that:

We have always, at the staff level, interpreted and, as far as I know, at the Commission level, interpreted promptly to mean immediate. If you look at the dictionary the definition of promptness, it means quickly or without delay.²

The witness also emphasized that a definition of "prompt" may depend on the circumstances of the situation, (See T.E. p. 66-67):

[W]e have requested that the utilities notify us immediately when they have knowledge of an incident or an accident on their system. This is even before they have gathered all the facts related to the accidents. If they are notified, we would like for them to call us up, give us notification and then follow that up later

1 Kentucky Power Exhibit No. 5.

2 T.E., p. 50.

on with a call to give us more details as they become available.³

The regulation on its face is clear. "Prompt" notification means immediate or as soon as practicable. The regulation establishes no definitive amount of time to "prompt". Rather, the language requires a reasonable response based upon the circumstances of a given accident. In the instant case, Kentucky Power had failed to notify the Commission by Monday morning of a fatality which had occurred on Saturday afternoon. Under the circumstances presented in the evidence, this is not prompt.

The Commission interprets the regulation as requiring the submission of a summary report within 7 days rather than 7 working days. The regulation is clear on this point, and this proceeding is not an appropriate occasion to consider a revision. Accordingly, the Commission finds that Kentucky Power has violated 807 KAR 5:006, Section 24, and that a penalty should be assessed.

FINDINGS AND ORDERS

After examining the evidence of record and being advised, the Commission finds that:

1. Kentucky Power, a utility which is subject to the jurisdiction of the Commission pursuant to KRS 278.010, has failed to comply with the regulation requiring prompt notice of any utility related accident which results in death and the submission of summary written reports within 7 days. 807 KAR 5:006, Section 24;

³ T.E., p. 51.

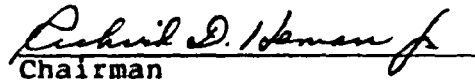
2. A penalty is appropriate and should be levied against Kentucky Power in the amount of \$1,000 for its failures to comply with the regulation; and

3. Kentucky Power should send a check or money order to the Office of General Counsel, 730 Schenkel Lane, Frankfort, Kentucky 40601, made payable to the Kentucky State Treasurer within 20 days of the date of this Order.

BE IT SO ORDERED.

Done at Frankfort, Kentucky, this 5th day of February, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director